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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2892/2016*, **, ***

Communication submitted by:	Marat Abdiev (represented by counsel, Rysbek Adamaliev)
Alleged victims:	The author
State party:	Kyrgyzstan
Date of communication:	23 June 2016 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 15 June 2016 (not issued in document form)
Date of adoption of Views:	17 October 2018
Subject matters:	Extraction of confession under torture by police; lack of effective investigation of allegations of torture
Procedural issues:	Exhaustion of domestic remedies; substantiation of claims
Substantive issues:	Torture; torture – prompt and impartial investigation; forced confession
Articles of the Covenant:	2 (3), 7 and 14 (3) (g)
Articles of the Optional Protocol:	3 and 5 (2) (b)

1. The author of the communication is Marat Abdiev, a citizen of Kazakhstan born in 1976. He is currently serving a prison sentence in Kyrgyzstan. The author claims that the State party violated his rights under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is represented by counsel.

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas B. Zimmermann.

*** An individual opinion by Committee member José Manuel Santos Pais (dissenting) is annexed to the present Views.

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The facts as submitted by the author

2.1 On 15 February 2012, at around noon, the author was arrested in his apartment by police on suspicion of murder and car theft. He was beaten by the police officers during the arrest and taken to the principal criminal investigations police department in Bishkek. There he was beaten by several police officers for 3–4 minutes while lying on the floor. They hit him on the head and soft body parts with their hands and feet. Afterwards he spoke to a senior officer, who ordered his transfer to the Pervomaysky district department of internal affairs in Bishkek. The author alleges that the police officers threatened him by saying that the fate of his children was in their hands.

2.2 Later that day, at the Pervomaysky district department of internal affairs (UVD), an officer in civilian clothes threatened to rape him with a police baton and started to pull down the author's trousers, at the same time beating him on the head. The author resisted, and after 10–15 minutes he was left alone in one of the offices. Every time officers passed through the office, they hit the author on the head. Sometime later they brought two plastic bags and put them over the author's head. He resisted, and was hit on the left side of the ribs. He managed to bite through the plastic bags before being suffocated. One of the officers suggested using electroshock. The author then asked to meet with the investigator and was beaten again, including on the head. At around 11.30 p.m., the author talked to the investigator. The investigator told the author that his confession could be exchanged for land property documents seized by the police during the search of his apartment. The author signed the confession. At around 12.30 a.m. the next day, he was taken to the temporary holding facility at the Pervomaysky district unit of internal affairs. The day after he was transferred to the temporary detention facility (IVS) at the principal department of internal affairs (GUVD) in Bishkek.

2.3 On 17 April 2012, the author's mother filed a complaint with the Pervomaysky district prosecutor's office in Bishkek about the alleged torture of her son by police officers and the unlawful search by the police of their apartment, during which $47,500 had disappeared. On 25 April, the prosecutor's office refused to open a criminal case based on an investigation of her allegations, because of the lack of evidence. The prosecutor questioned the police officers involved in the search and the arrest of the author, who denied their involvement in the disappearance of the money. He also requested information contained in medical documents from IVS GUVD and pretrial detention centre (SIZO) No. 1 in Bishkek. According to these documents, the author had not complained about any physical injuries. The investigator did not request a forensic examination of the author and closed the investigation based on the police officers' testimonies.

2.4 On 7 May 2012, the Bishkek city prosecutor's office reversed the prosecutor's decision of 25 April 2012 and ordered the Pervomaysky district prosecutor's office to carry out additional investigations. On 6 June, after additional investigations, the Pervomaysky district prosecutor's office refused to open a criminal case on the grounds that a criminal case against the author was pending before the Pervomaysky district court in Bishkek. On 8 June, the Pervomaysky district prosecutor repealed this decision and ordered additional investigations. On 18 June, the Pervomaysky district prosecutor's office again refused to open a criminal case after questioning one of the two witnesses present at the search of the author's apartment regarding the money that had allegedly disappeared. No additional investigation into the torture allegations was carried out. On 9 July, the Pervomaysky district prosecutor's office reversed the decision of 18 June. On 18 July, the investigation was closed again with a refusal to open a criminal case and without any additional investigation into the allegations of torture. This decision was repealed by the Bishkek city prosecutor's office on 20 July.

2.5 On 30 July 2012, the Bishkek city prosecutor's office decided not to open a criminal case on the basis of newly collected information. The prosecutor's office requested the results of a forensic examination, which stated that the author did not have any injuries. The prosecutor also questioned the general practitioner of SIZO No. 1, who stated that on 18 February 2012, when the author was admitted to the SIZO, he had bruises on both shoulders. The prosecutor also had medical certificate No. 927 from Bishkek city hospital No. 4, in which it was stated that he had bruises. When asked about the nature of the bruises, the author explained to the general practitioner that he had been bruised at his sports

training before he was arrested and signed the statement in the SIZO records. The SIZO medical unit did not receive any complaints from the author. According to the author, he had been instructed by the police officers before the examination to say that the bruises were a result of his sports activities.

2.6 On 3 August 2012, the author filed a complaint with the prosecutor general's office against the police officers who had allegedly tortured him. On 8 August, a letter from the prosecutor general's office was sent to the author's mother, informing the author that the decision not to open a criminal case dated 30 July 2012 had been repealed and that the case was sent to the Bishkek city prosecutor's office for additional investigation.

2.7 On 9 September 2012, the Bishkek city prosecutor's office refused to open a criminal case. The prosecutor referred to the criminal case against the author to justify the police officers' statement that they had not abused their power when questioning the author. The prosecutor questioned the author but failed to question the witnesses named by his mother – the author's cellmates from SIZO No. 1 – who had seen his injuries. The prosecutor arrived at the conclusion that there was no evidence to support the author's allegations of torture. The prosecutor general's office repealed this decision on 12 December 2012.

2.8 On 28 December 2012, the Pervomaysky district prosecutor's office, after carrying out an additional investigation, again made a decision not to open a criminal case. The prosecutor referred to a medical certificate from Bishkek city hospital No. 4 dated 17 February 2012, according to which the author had been examined by a doctor, who found bruises on his body. The prosecutor attached to his decision an answer to inquiries sent to SIZO No. 1 that it was impossible to locate the persons detained in the cell with the author.

2.9 On 30 September 2013, the author's new counsel submitted a request to the Pervomaysky district court to repeal the decision of the Pervomaysky district prosecutor's office dated 28 December 2012 on the grounds that it was unlawful and ungrounded. On 16 November 2013, the court found that the orders of the prosecutor general's office dated 12 December 2012 had not been carried out. In particular, the author's cellmates from SIZO No. 1 had not been located and the head and the officers of IVS GUVD, where the author was detained from 16 to 18 February 2012, had not been questioned about the injuries recorded in medical certificate No. 927 dated 17 February 2012. The court overturned the decision of the prosecutor's office and sent the case back for further investigation.

2.10 On 7 December 2013, the Pervomaysky district prosecutor's office again refused to open a criminal case, including in its decision information previously collected by the prosecutors. The prosecutor's office concluded that the author's complaints had been fabricated with the aim of avoiding liability.

2.11 The counsel appealed the decision dated 7 December 2013 to the Pervomaysky district court in Bishkek on 25 February 2014. The court rejected the appeal on 14 March, having found that the decision of the prosecutor had been based on a thorough investigation and that the author's allegations could not be confirmed. On 26 March, the counsel filed a cassation appeal with the city court in Bishkek, which was rejected on 13 May. The counsel appealed to the Supreme Court under the supervisory review proceedings on 19 May. His appeal was rejected on 15 July.

The complaint

3.1 The author alleges a violation of his rights under article 7 of the Covenant in view of the repeated beatings, psychological threats concerning his children, threat of rape and suffocation with plastic bags to which he was subjected by police officers.

3.2 The author alleges that for more than two years he tried, without success, to have a criminal case opened against the police officers who had tortured him. He alleges that the State party failed to effectively investigate his allegations, in violation of article 2 (3), in conjunction with article 7, of the Covenant.

3.3 Finally, the author claims that he was forced, by the use of torture, to incriminate himself, in violation of article 14 (3) (g) of the Covenant.

3.4 The author asks the Committee to find a violation of the Covenant under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant; to urge the State party to carry out an effective investigation into his allegations and punish the officers guilty of torturing him; to provide him with remedies, including adequate compensation; and to urge the State party to establish guarantees to prevent torture and an independent mechanism to investigate allegations of torture.

State party's observations on admissibility and the merits

4.1 By note verbale dated 18 August 2017, the State party submitted its observations on the complaint. The State party states that the author was arrested on 15 February 2012 on suspicion of murder. He was charged on 14 March with murder under article 97 and with unlawful possession of a car under article 172 of the Criminal Code. On 15 March 2012, the author's criminal file was submitted to the Pervomaysky district court for trial. By a judgment of the Pervomaysky district court dated 8 May 2013, the author was sentenced to 18 years in prison. The sentence was confirmed by the Bishkek city court on 21 May 2014. At the same time, the amnesty law adopted on the occasion of the sixty-fifth anniversary of the Universal Declaration of Human Rights was applied to the author and his unserved prison sentence was reduced by one fifth. The author's guilt had been established on the basis of forensic, trasological and psychiatric examinations, witness statements, collected evidence and the initial confession of the author. The author's guilt was also supported by the reconstitution of the situation and circumstances of events and by the on-site examination of his statements. During the trial there was no inadmissible evidence or circumstances that would put the author's guilt in doubt.

4.2 The author's allegations of torture were investigated on numerous occasions by the prosecutor's office and could not be confirmed. The author's claim that the decision of the prosecutor dated 7 December 2013 to refuse to open a criminal case was unlawful and unjustified was rejected by the Pervomaysky district court decision dated 14 March 2014. The findings of the Pervomaysky district court had been confirmed by the decision of the Bishkek city court on 13 May 2014 and by the Supreme Court on 15 July 2014.

4.3 Regarding the author's request for compensation for torture, the State party submits that claims for compensation of moral damage are considered by the domestic courts of general jurisdiction, which assess the amount of compensation based on the character of the physical and moral damage suffered. The author has not requested compensation before the domestic courts.

4.4 The State party also notes that according to rule 96 of the Committee's rules of procedure, the complaint should be submitted by the individual personally or by that individual's representative when the individual in question is unable to submit the communication personally. According to the national legislation, a power of attorney for people who are serving a prison sentence should be signed by the prison director. This was not done in the case of the present communication.

Author's comments on the State party's observations

5.1 On 19 October 2017, the author provided comments on the State party's observations. The author submits that the State party's observations concerning his trial and his proven guilt are not relevant to the subject matter of the complaint; the author is not asking the Committee to review facts and evidence or to establish his innocence.

5.2 The second part of the State party's observations does not provide answers concerning the effectiveness of the investigation of the author's allegations of torture. The author repeats his allegations that the investigation was not effective, indicating that over a period of two years there were eight decisions not to open a criminal case against the police officers. None of the prosecutor's orders for further investigation were implemented. The State party failed to carry out a full investigation into the author's allegations of violations under articles 7 and 14 (3) (g) of the Covenant. In his complaint the author indicated the names of the police officers who had tortured him to confess. The prosecutors only questioned persons with an interest in hiding the fact of torture. The prosecutor's office did not even order a forensic examination at the beginning of the investigation. They failed to

locate the witnesses indicated by the author and his mother. In the subsequent decisions, the prosecutors mentioned that, according to a medical certificate dated 17 February 2012, the author had bruises and could be detained in IVS. Despite the explicit indication that the author had injuries the investigation was closed, with reference to a statement from the head of IVS – an institution fully accountable to the Ministry of Internal Affairs – that no complaints had been received from the author. Prosecutors, without duly checking the author's allegations, referred to the criminal case against the author as being in itself an indication that the police officers had not abused their power. They also indicated that the complaint submitted by the author's mother was an attempt to avoid liability.[1]

5.3 Regarding the claim for compensation, the author submits that the national legislation does not allow an alleged victim of torture to submit a civil suit for compensation until the perpetrators are found guilty by a criminal court. In the author's case, since the investigation was not carried out properly, a criminal case was not opened and he cannot submit a civil claim. In addition, the State party did not provide examples of cases where moral damage had been compensated by the courts.

5.4 Finally, the author states that the Committee does not require the signature of the director of a prison; the author's signature on a power of attorney alone is sufficient.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that all available domestic remedies have been exhausted. It also notes the State party's observation that the domestic remedies have not been exhausted on the matter of compensation for the torture allegedly suffered by the author. The Committee observes that the domestic authorities denied that torture took place and refused to open a criminal case against the police officers. It is thus unclear on what grounds the author could have filed a civil suit for compensation, which is linked to the outcome of the criminal proceedings against the perpetrators. In the absence of other objections from the State party regarding the exhaustion of domestic remedies by the author, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 As to the author's claim under article 14 (3) (g), the Committee notes that this article applies in the determination of a criminal charge. The author did not provide details on his trial, did not attach a copy of the judgment in his case and did not raise claims of arbitrariness of the judicial proceedings in his criminal case. On the basis of the information available on file, the Committee is not able to assess the extent to which the author's confession, allegedly obtained under torture, was taken into account by the court in the final

[1] +The author's counsel submits that in 2013, a coalition of non-governmental organizations submitted an alternative report to the Committee against Torture. Part of the report concerned investigations of allegations of torture by the State party. In the report, it is stated that, despite the legal requirement to treat complaints of torture as allegations of a crime, they are often processed as simple complaints about actions of law enforcement agencies. In these cases, criminal cases are not opened and the complaints are either ignored or, at best, lead to an internal investigation. Such investigations end with questioning of police officers, who deny the fact of torture, after which the prosecutors decide not to open a criminal case. The proper investigative steps, such as checking the rooms where torture was inflicted, questioning the witnesses indicated by the victim and carrying out medical check-ups or forensic examinations, are not followed. Internal investigations are usually confidential; the alleged victim is not informed of the steps taken, does not have access to the relevant documents, cannot submit evidence and does not have all the rights a victim in a criminal case would have.

verdict. For this reason, the Committee finds this part of the complaint insufficiently substantiated and inadmissible under article 2 of the Optional protocol.

6.5 The Committee finds the author's claim under article 7, read alone and in conjunction with article 2 (3), of the Covenant sufficiently substantiated for the purpose of admissibility and proceeds to its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's allegation that he was tortured by police officers from the moment of his arrest on 17 February 2012 until he signed a confession late at night on the same day. In this regard, the Committee notes that the copies of the investigative documents on file refer to the medical certificate from hospital No. 4 dated 17 February 2012, which mentions that the author had bruises. The same information is reflected in the medical records of SIZO No. 1, where the author was detained.

7.3 The Committee recalls that a State party is responsible for the security of any person it holds in detention and, when an individual in detention shows signs of injury, it is incumbent on the State party to produce evidence showing that it is not responsible.[2] The Committee has held on several occasions that the burden of proof in such cases also cannot rest with the author of a communication alone, especially considering that frequently only the State party has access to the relevant information.[3]

7.4 The Committee notes that the State party did not refute the author's allegations with reference to proper documentary or other evidence. Taking into account the detailed information provided by the author about his treatment by police officers upon arrest, including the names of those officers, the bruises on the author's shoulders, his claim that the police officers forced him to make a false statement about the nature of his injuries to the general practitioner during the medical check-up in city hospital No. 4, as well as the lack of a sufficient explanation to the contrary from the State party, the Committee finds a violation of the author's rights under article 7 of the Covenant.

7.5 The Committee notes the author's further claim that the investigation in his case was ineffective. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective.[4] In the present case, the Committee notes that the author's mother submitted to the Pervomaysky district prosecutor's office a complaint alleging torture of the author on 17 April 2012. The investigation was started and the decision not to open a criminal case was made by the prosecutor on 25 April, i.e. one week after receiving the complaint. The Committee also notes, however, that over a period of two years the investigation was reopened eight times; the instructions set out in the decisions to reopen the investigation were not carried out; the witnesses indicated by the author and his mother were not questioned; and a forensic examination was not carried out despite a medical certificate showing that the author had bruises on his body. Given these circumstances, it can be said that although the investigation may have started promptly, it was not concluded in a timely manner.

7.6 As to the impartiality of the investigation, the Committee notes the author's allegations that only the police officers who arrested him were questioned during the initial investigation, that the prosecutor's office did not locate and question his cellmates from

[2] See, e.g., *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.8; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.2; and *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2.

[3] See, e.g., *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.2; and *Belier v. Uruguay* (CCPR/C/15/D/30/1978), para. 13.3.

[4] See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14; and, for example, *Neporozhnev v. Russian Federation* (CCPR/C/116/D/1941/2010), para. 8.4.

SIZO No. 1 and that no forensic examination was ordered. The Committee observes that no reason has been provided by the investigative body for not ordering a forensic examination from the start of the investigation. The forensic examination mentioned in the decision of the Bishkek city prosecutor's office dated 30 July 2012 does not indicate a date, place or conclusion of the examination. As a result, it remains unclear whether such an investigation was in fact carried out at all.

7.7 The Committee observes further that, on the basis of the information available on file, it seems that when investigating the alleged torture of the author, the prosecutors did not question the author himself until September 2012. His questioning is mentioned for the first time in the decision of the Bishkek city prosecutor's office dated 9 September 2012, the sixth of the eight decisions not to open a criminal case. At the same time, the police officers who had allegedly tortured the author were questioned from the outset of the investigation. The Committee also notes that the prosecution was not able to question the author's cellmates from SIZO No. 1 because they could not be located. Taking into account the availability of registry records of detained persons in the detention facilities, and in the absence of further explanation from the State party, the Committee cannot accept this statement as a valid argument. Taking into account the foregoing observations, the Committee concludes that the investigation of the author's allegations of torture was not impartial. It can also not be said that the investigation was adequate.[5]

7.8 In addition, the Committee takes into account the fact, mentioned earlier, that the legislation of the State party links the possibility of lodging a civil claim for compensation in cases of torture to a finding of guilt of the perpetrators in criminal proceedings. In the present case, failure of the authorities to effectively investigate the author's allegations deprived him of the possibility of seeking compensation for the alleged torture.

7.9 In the light of the above observations, the Committee finds that the author's rights under article 2 (3), read in conjunction with article 7, of the Covenant have been violated by the State party.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obligated, inter alia, to take steps to: (a) conduct a thorough and effective investigation into the author's allegations of torture and, if confirmed, prosecute, try and punish those responsible for the torture of the author; and (b) provide compensation to the author for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

[5] Cf. *Allaberdiev v. Uzbekistan* (CCPR/C/119/D/2555/2015), para. 8.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para. 10.4.

Annex

Individual opinion of Committee member José Santos Pais (dissenting)

1. I regret not being able to share the Committee's conclusion that the State party violated the author's rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant (para. 8).

2. There are several allegations of torture in the present case, but when analysed in detail, doubts arise as to author's credibility. According to the author, on 15 February 2012, he was arrested by police on suspicion of murder and car theft (para. 2.1). He was later sentenced to 18 years in prison (para. 4.1). He was allegedly beaten by police officers during his arrest and taken to the police department in Bishkek, where he was again beaten while lying on the floor. That same day, police officers hit him several times on the head and soft body parts with their hands and feet (para. 2.1), two plastic bags were put on his head, he resisted and received a blow to the ribs on the left side (para. 2.2). However, author does not provide any description of his injuries, nor does he mention a visit to a hospital or any medical check-ups in the detention facilities where he was kept.

3. The author's mother, on 17 April 2012, filed a complaint with the district prosecutor's office in Bishkek about the alleged torture of her son by police officers, i.e. two months after his arrest. The prosecutor questioned the police officers who allegedly were involved in the beating and also requested information contained in medical documents from detention facilities where author was kept. According to these documents, the author did not complain about any physical injuries. Therefore, the district prosecutor refused to open a criminal case, citing the lack of evidence (para. 2.3). It should also be kept in mind that eventual traces of physical injury, if indeed this did occur, should have disappeared by then.

4. It is true that the Bishkek city prosecutor's office reversed the prosecutor's decision several times and ordered additional investigations to be carried out. The district prosecutor still refused to open a criminal case (para. 2.4). However, on 30 July 2012, even the Bishkek city prosecutor's office decided not to open a criminal case on the basis of newly collected information, namely the results of a forensic examination, according to which author did not have any injuries (para. 2.5). It should also be mentioned that the author does not refer to any forensic examination at all and claims such an examination did not take place.

5. The prosecutor also questioned the general practitioner of pretrial detention centre (SIZO) No. 1, who explained that on 18 February 2012, when the author was admitted and had allegedly been repeatedly beaten on the head, soft body parts and his left ribs (para. 2 above) just three days earlier, he had bruises only on both shoulders, not the head. A further medical certificate from Bishkek city hospital also stated that author had bruises. However, when asked about the nature of the bruises, the author explained to the general practitioner that he had been bruised at his sports training before he was arrested and signed the statement in the SIZO records. Further, the SIZO medical unit did not receive any complaints from the author (paras. 2.5 and 2.8).

6. It is true that the author continued to present complaints to the authorities (paras. 2.6–2.10), but these complaints were seen to be fabricated with the aim of avoiding liability (para. 2.10) and the district court finally rejected the author's appeal on 14 March 2014, having found that the decision of the prosecutor had been based on a thorough investigation and that the author's allegations could not be confirmed (para. 2.11).

7. According to the available evidence and facts presented by both the author and the State party, it is difficult to establish whether the author indeed suffered any physical injury and whether the State party's authorities failed to duly investigate his allegations effectively, in spite of having repeatedly opened and closed investigations relating to them. Since, due to the lapse of time, any traces of physical injury were – and are still – no longer observable, any criminal investigation would fail to establish such injury. Moreover, statements signed

by author confirm that he had been bruised at his sports training before his arrest and the available medical records note bruises on both shoulders, not the head, where author was allegedly repeatedly beaten (para. 5 above); this seems to run counter to the Committee's conclusions (paras. 7.3–7.4).

8. According to the Committee's case law and paragraph 26 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, it is generally for the courts of States parties to review the facts and evidence in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality. From the facts on file, I see no confirmation that the State party failed to exercise due diligence in the present case, having always concluded that the author's allegations were not substantiated.

9. In the absence of clear signs of physical injury, taking into account the available medical records mentioning only bruises, and indeed statements signed by the author himself explaining how he got them, the State party's authorities reached what can be seen as a plausible conclusion.

10. In the light of the above, and contrary to the Committee's findings, I would have concluded that the author's claims were insufficiently substantiated and so would not have found a violation in the present case.